Cortina, Sr, # V-59584
NAME

PRISON NUMBER

CSP- Corcoran, 4A-3L-7, P.O. Box 3476
CURRENT ADDRESS OR PLACE OF CONFINEMENT

Corcoran, CA 93212
CITY, STATE, ZIP CODE

FILED
JAN - 2 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

2254 ✓ 1983
FILING FEE PAID
Yes ___ No ✓
IFP MOTION FILED
Yes ___ No ✓
COPIES SENT TO
Court ✓ Prose ___

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Cortina, Sr.,
(FULL NAME OF PETITIONER)

PETITIONER

v.

D. Adams, Warden,
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

Edmund G. Brown, Jr.,
The Attorney General of the State of California, Additional Respondent.

Civil No. '08 CV 0015 JM LSP
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: Superior Court of the State of California, Riverside County.

2. Date of judgment of conviction: 8 June 2004.

3. Trial court case number of the judgment of conviction being challenged: INFO 042160.

4. Length of sentence: 25 Years to Life.

5. Sentence start date and projected release date: 24 November 2004; 2029.

6. Offense(s) for which you were convicted or pleaded guilty (all counts): California Penal Code, sections 246.3, 12021, subdiv.(a)(1), 12316, subdiv.(b)(1), 245, subdiv.(a)(2), 667 and 1192.7, subdiv.(c)(8).

7. What was your plea? (CHECK ONE)
   - (a) Not guilty ☒
   - (b) Guilty ☐
   - (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
   - (a) Jury ☒
   - (b) Judge only ☐

9. Did you testify at the trial?
   ☒ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
    ☒ Yes ☐ No

11. If you appealed in the California Court of Appeal, answer the following:
    - (a) Result: Affirmed Conviction.
    - (b) Date of result, case number and citation, if known: 29 August 2006. Case No.E036988.
    - (c) Grounds raised on direct appeal: Trial Court erred when it failed to instruct the jury SUA SPONTE with CALJIC.5.50.
      Trial counsel was ineffective by failing to object when the court did not give CALJIC No.5.50 or request further clarifying language to CALJIC No.12.50.

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
    - (a) Result: Denied.
    - (b) Date of result, case number and citation, if known:
    - (c) Grounds raised: Trial Court erred when it failed to instruct the jury SUA SPONTE with CALJIC.5.50.
      Trial counsel was ineffective by failing to object when the court did not give CALJIC.No.5.50 or request further clarifying language to CALJIC. No.12.50.

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

(a) Result: N/A

(b) Date of result, case number and citation, if known: N/A

(c) Grounds raised: N/A

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?
☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: N/A

(b) Nature of proceeding N/A

(c) Grounds raised N/A

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result N/A

(f) Date of result: N/A

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?
☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

(a) California Court of Appeal Case Number: N/A

(b) Nature of proceeding: N/A

(c) Grounds raised: N/A

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result N/A

(f) Date of result: N/A

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?
☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

(a) California Supreme Court Case Number: N/A

(b) Nature of proceeding: N/A

(c) Grounds raised: N/A

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result N/A

(f) Date of result: N/A

20. If you did ***not*** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

N/A

//

//

//

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? N/A

(i) What was the prior case number? N/A

(ii) Was the prior action (CHECK ONE):N/A

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decisionN/A

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☒No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition? N/A

☐ Yes ☐ No

CAUTION:

- Exhaustion of State Court Remedies: In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- Single Petition: If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- Factual Specificity: You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE** The failure to properly instruct amounted to a federal due process violation requiring reversal.

Supporting FACTS (state *briefly* without citing cases or law) On October 12, 2002, Dennis Hernandez, who lives across the street from petitioner, was out watering his lawn. Hernandez heard a gunshot and turned and saw petitioner yelling at someone walking down the sidewalk. He could not hear all that petitioner was yelling except for the person to stay away from his house. When the person turned and said something to petitioner, petitioner raised the gun chest high and fired again at the person. That is when the person started running away. Hernandez did not know the person petitioner was shooting at although he had seen him scavenging trash in the neighborhood in the past (I RT 43-47, 72-75.)

Hernandez went into the house and called 911. Police arrived about two minutes later. (I RT 54.)

Kenneth Patterson, a Riverside deputy sheriff, arrived first. He saw Cleo Cortina, Jr.,[1] getting into a car in front of petitioner's house. Cortina had his four year old brother with him. As patterson stopped Cortina and talked to him, petitioner came out of his house. Petitioner said that he was no longer a parolee and he should not be treated this way. As Patterson tried to get information from Cortina, two other officers, Kenneth Black and Ernest..........Cont. on page 6-6i.

Did you raise GROUND ONE in the California Supreme Court?
☒ Yes ☐ No.

---

1. Hereinafter, Cleo Cortina, Jr. will be referred to only as Cortina. Cleo Cortina, Sr. will be referred to only as petitioner

Estrada, who arrived shortly after Patterson, tried to get petitioner to go back in his house. (I RT 91, 94-101.)

Petitioner's house had a gate around it and two pit bull dogs in the backyard. Petitioner opened the gate and came out of his yard, right up to Estrada. He told Estrada that they had killed petitioner's brother and he would kill them. Petitioner was told by the officers to go back in the house and eventually he did. (I RT 102-103.)

As Patterson was again talking to Cortina, petitioner came out of the house again. He came up to the gate and told the officers to quit harassing his family and to leave. Although he did not threaten the officers again, he walked back and forth in the yard, not complying with directions to go back in his house. (I RT 103-107.)

At some point Carmello Torres, petitioner's pastor, came up to the gate and started talking to petitioner, telling him to cooperate with the police. Patterson asked Cortina to call his mother, who was in the house, so Patterson could talk to her. Cortina did so and about five minutes later she came out of the house. Petitioner told her to go back in the house, although she approached Patterson and spoke with him in any event. (I RT 108, 110-117; II RT 437.)

Petitioner went back in his house and came back out again. Patterson thought that petitioner may be armed. He saw a protrusion from the left side of petitioner's waistband and his shirt was now pulled over his waist. After awhile, petitioner went back into the house. (I RT 117-118.)

About 45 minutes after his initial call to police, Hernandez looked out his window and saw the police were still outside petitioner's house. Hernandez approached the police. Petitioner was waiving his arms and asking Hernandez why he called the police. Hernandez approached the police and said he felt threatened by petitioner. At some point, petitioner approached the fence where Hernandez was on the sidewalk and told Hernandez he did not know what he was talking about. Although petitioner was yelling, he calmed down as he talked to Hernandez. Petitioner told Hernandez that the person he shot at had attacked his family with a machete a few days before and petitioner was taking care of the neighborhood. (I RT 54-62.)

Petitioner went back in his house and Patterson again talked to petitioner's wife and Cortina. As he did so, Patterson heard two shots being fired in the house. The three officers set up a perimeter. Petitioner's wife and Cortina left the scene. Torres ran into the house. Numerous other officers arrived. (I RT 119-126.)

Eventually, petitioner came out of the house by himself. Patterson told petitioner to lift up his shirt which he did. Petitioner walked back towards where the dogs were and released them into the front yard. Petitioner started backing up towards the house as officers went over the gate and tackled petitioner. They arrested him. The dogs, which were snapping at the officers, were shot dead. (I RT 127-129, 183, 280-282.)

After doing a protective sweep with his canine, Riverside Deputy Sheriff Doug Swan helped with evidence collection. He went into the house and saw a revolver inside the house along with ammunition. They were on a shelf near the front door. The gun itself was empty of both live rounds and casings. The rounds were both in a black eye glass case and loose on the shelf. (I RT 274, 283-291.)

Police spoke with Hernandez about the trajectory of the bullets. Although they searched, no bullets, bullet holes or bullet impact places were found. (I RT 267-270.)

Debra Kowal, a criminalist with the Los Angeles County Department of the Coroner, found gunshot residue on petitioner's hands. (II RT 346-358.)

DEFENSE

Petitioner testified that he and his family were going to have an informal party at a nearby park. As they were getting ready to leave, petitioner was told that Michael Tijerina was outside selling earrings. Tijerina was often around the neighborhood selling items, so petitioner went to look at them. One pair was for $10. Petitioner told Tijerina to wait in the front yard and petitioner would go get the money. (II RT 482-485.)

Petitioner's wife told petitioner that Tijerina had come into the house and was saying offensive things to her. For instance, he called her a bitch and a whore and was swearing at her. Petitioner's wife looked scared. When Tijerina did the same thing in front of petitioner, he hit Tijerina in the face. Tijerina took off running, saying that he would be back to burn down the house and kill petitioner's family. (II RT 486-487.)

Petitioner was frightened because he knew that Tijerina suffered from a mental illness. Tijerina had a reputation around the neighborhood for violence. Petitioner had heard that Tijerina had hurt and robbed people, and chased them with a machete. Petitioner was therefore scared by Tijerina's reputation and thought he would really do what he said. (II RT 487-489, 578-580.)

Petitioner had two weeks earlier found a gun in his son's room. Because other children go in the room, petitioner had removed it and placed it in a closet for safekeeping. He had not yet told his son about moving the gun. He now took the gun from the closet and placed it on a shelf near the door. (II RT 496-499.)

Petitioner went to the park with his family but returned with his sons, Cortina and Jose. Cortina was getting Jose ready for a party. As he was doing so, Tijerina came back to the gate, yelling at petitioner from outside that he said he would be back. Petitioner grabbed the gun and went outside and saw Tijerina opening the gate. He was again threatening to kill petitioner and his whole family, and burn down the house. Petitioner fired in the air. Petitioner was scared at the time and felt he needed to protect himself. (II RT 492-495, 500-501, 504-506.)

Tijerina backed up out of the gate. As he did so, he started moving down the street, still yelling at petitioner about how he would harm petitioner and his family. When he stopped and turned towards petitioner, petitioner fired a second shot over Tijerina's head. Petitioner said he was not trying to hit Tijerina but to scare him. After the second shot, Tijerina took off running out of sight. (II RT 506-510.)

Soon after, Cortina and Jose went out to Cortina's car. As they were dong so, Patterson pulled up behind the car. Petitioner, who saw Patterson approach, went outside to find out what was going on. He asked Patterson why he was harassing Cortina and Jose. Although Patterson asked petitioner to step back because it does not concern him, petitioner was getting upset because Jose was hot and crying. Petitioner asked if he could take Jose, but apparently could not. At one point, petitioner even opened the gate to come outside, but Patterson pushed it shut, pushing petitioner back in the yard. (II RT 512-516.)

Petitioner told Patterson to quit treating him like he was still on parole or like his brother. Patterson said that they do not shoot people in the back like Indio police. By this point, the two other officers had arrived. (II RT 517, 521.)

Petitioner was angry, especially about the remark involving his brother. However, he did not threaten the officers at any point. The most he said was that they would have to tackle him to take him down and arrest him. Petitioner was extremely involved in the Victory Ministry. There, he had numerous dealings with police officers. He had no vendetta against anyone, including the ones who shot his brother. (II RT 517-520, 574-575.)

Petitioner went and sat on the porch. He did not want to go in because he wanted to keep an eye on his sons. At one point he went out and spoke with his son, and then went back into his house. In total, petitioner thought that he went 3-4 times into the house. (II RT 523-529.)

At some point, the officers were no longer even talking to Cortina. Petitioner told them to leave his family alone. Estrada told petitioner he does not own the road, the county does. (II RT 531.)

The last time petitioner went in the house, Torres went in with him. Torres calmed him down. Torres testified that he came to the house because he noticed the anger between petitioner and Patterson. Both were swearing at each other. They were in the house for ten to fifteen minutes before coming out again. Petitioner had not touched the gun again since the second shot in Tijerina's direction. He unloaded the gun one of the times he had gone back in the house, leaving in on the shelf. He did hear gunshots while he was in the house, but he had not shot them. There were numerous shots fired in the neighborhood thought so did not concern him. Torres did not hear any shots fired. (II RT 432-438, 567-569, 638.)

When he came out the last time, the officers jumped over the fence and tackled him. He was wrestled to the ground and arrested. While in the police car, he heard the gunshots, apparently the police shooting the pit bulls. (II RT 570-574.)

Cortina admitted that the gun petitioner used was his. Cortina had kept it under the bed and would go shooting with friends. He also kept bullets under the bed or in the dresser. He had not told anyone that fact because he had gotten the gun "in the street" and knew that it was not registered. He was scared that he would get in trouble. (II RT 390-391, 423; III RT 868-870.)

Numerous people testified on petitioner's behalf from Victory Ministry. They knew that petitioner had committed crimes in the past and had been to prison. However, he was a leader in the church, would mentor troubled teenagers, would get them involved in church and school, and that he was neither an angry nor violent man. (II RT 441-447, 452-459, 465-471; III RT 735-736, 743-747.)

Bryan Casier, the custodian of records for the Riverside County Department of Mental Health, testified that Tijerina had numerous holds, both voluntary and involuntary, with the department of mental health. He suffered from schizophrenia and psychosis. He had been hospitalized and released near the time he came to petitioner's house. (II RT 753-780.)

REBUTTAL

Julie Thornhill, a probation officer, spoke to petitioner for purposes of creating a report prior to trial. Petitioner told her the gun was his for protection because they lived in a bad neighborhood. Petitioner testified at the trial he told her this because he wanted to get a better deal. (III RT 809-811, 873-874.)

Hernandez testified that he has known Tijerina for about five years. He was always walking around the neighborhood with a beer in his hand. Petitioner was not shooting at Tijerina on the day of the incident. (IV RT 892-894.)

Patterson spoke to Cortina shortly after the incident. Cortina thought his father was upset but did not know why. Cortina said his father had been drinking, although Cortina denied saying that. Petitioner also testified, as did members of Victory Outreach, that he had not had anything to drink in years. Cortina did not mention to Patterson that the gun was his. (II RT 403, 461, 473, 481; IV RT 898-899.)

Petitioner had another inmate call petitioner's house to have Cortina testify that the gun was his. A message was eventually left for Cortina, although he had already spoken with the attorney representing petitioner at that point. Cortina had also spoken to another attorney to find out the legal implications of admitting he possessed an unregistered gun. (III RT 869-870; IV RT 904-911, 915; II CT 428c.)

(b) **GROUND TWO**: Trial counsel was ineffective by failing to object when the court did not give CALJIC.5.50 or request further language to CALJIC. No. 12.50., in violation of petitioner's Sixth and Fourteenth Amendment Rights.

Supporting FACTS (state *briefly* without citing cases or law): (See pages 6-6i.)

Did you raise GROUND TWO in the California Supreme Court? N/A

☒ Yes ☐ No.

(c) GROUND THREE: N/A

Supporting FACTS (state *briefly* without citing cases or law): (See pages 6-6i.)

Did you raise GROUND THREE in the California Supreme Court? N/A

☐ Yes ☐ No.

(d) **GROUND FOUR**: N/A

Supporting FACTS (state *briefly* without citing cases or law): (See pages 6-6i.)

Did you raise GROUND FOUR in the California Supreme Court? N/A

☐ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?
☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:
(a) Name of Court: N/A
(b) Case Number: N/A
(c) Date action filed: N/A
(d) Nature of proceeding: N/A
(e) Grounds raised: N/A
(f) Did you receive an evidentiary hearing on your petition, application or motion? N/A
☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
(a) At preliminary hearing: UnKnown.
(b) At arraignment and plea: Unknown.
(c) At trial: Unknown.
(d) At sentencing: Unknown.
(e) On appeal: Steven A. Torres, ESQ.,3579 Foothill Boulevard, Pasadena, CA91107
(f) In any post-conviction proceeding: N/A
(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future: N/A

(b) Give date and length of the future sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? N/A
☐ Yes ☒ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: 12/28/07

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/28/07
(DATE)

Cleo Cortina
Cortina, Sr.
SIGNATURE OF PETITIONER

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

[C.C.P. §§ 446, 2015.5; 28 U.S.C. §1746]

I, Leonides Cortina, am a resident of the State of California and am over the age of eighteen years and am not a party to the above-entitled action. My address is listed below.

On 28 Decmber 2007., I served the following documents:

Writ of Habeas Corpus

by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid in the United States Mail by delivering to prison officials for processing through the Institution's internal legal mail system at San Diego California, addressed as follows::

United States District Court
940 Front St
San Diego, CA 92101

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed in the County of San Diego, California on 28 December 2007.

Leonides Cortina V-32231
R.J.Donovan Corr. Fac..,Fac3-13-136L
P.O. Box 799003
San Diego, CA 92179-9003

Leonides Cortina 12-28-07
Leonides Cortina.

Pursuant to the holding of the United States Supreme Court in Houston v. Lack 108 S. Ct. 2379, 487 U.S. 266, 101 L.Ed.2d 245 (1988) and FRAP, Rule 4 (c) inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the Institution's internal legal mail procedures.

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 ✓ 1983

FILING FEE PAID Yes ___ No ✓

IFP MOTION FILED Yes ___ No ___

COPIES SENT TO Court ✓ Prob ___

FILED JAN - 2 2008 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY [signature] DEPUTY

I (a) PLAINTIFFS

Cleo Cortina Sr.

DEFENDANTS

Adams, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Kings

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Cleo Cortina Sr.
PO Box 3476
Corcoran, CA 93212
V-59584

ATTORNEYS (IF KNOWN)

'08 CV 0015 JM LSP

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☒ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 1/2/2008 ~~SIGNATURE OF ATTORNEY OF RECORD~~

[signature]